

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY DEMOND BOYD,

Defendant-Appellant.

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UNPUBLISHED

December 28, 1999

No. 209666

Saginaw Circuit Court

LC No. 97-014180 FH

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Defendant appeals by right his conviction and sentence for delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), entered after a jury trial. We affirm.

Defendant argues that he was denied a fair trial where the trial court precluded him from impeaching a key prosecution witness with evidence of her prior conviction for unlawfully driving away an automobile (UDAA). MCL 750.413; MSA 28.645. This Court has held that UDAA is a theft crime, and may be used to impeach a witness under MRE 609(a)(2). *People v Dixon*, 175 Mich App 472; 438 NW2d 303 (1989). While the trial court erred in failing to find UDAA is a theft crime, the error was harmless. The witness was impeached with her prior conviction for uttering and publishing, and she revealed that she faced a habitual offender, third offense charge. Where the witness had also testified that she was a drug addict and spent time in prison, there is no showing that impeachment with an additional UDAA conviction would have affected the jury's assessment of her credibility. Any error was harmless. *People v Lukity*, 460 Mich 484; \_\_\_ NW2d \_\_\_ (1999).

Defendant also asserts that there was insufficient evidence to support his conviction. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Although no drugs or buy money were found on defendant at his arrest, there was sufficient testimony from observers of the transaction to establish defendant's possession and delivery of the cocaine to allow a reasonable finder of fact to convict defendant.

Finally, defendant asserts his 30 month to 20 year sentence is disproportionate where he had no previous felony convictions. Defendant's sentence fell within the sentencing guidelines range of 12 to 30 months, and is presumed to be neither excessively severe nor unfairly disparate. *People v Kennebrew*, 220 Mich App 601; 560 NW2d 354 (1996). Defendant failed to present unusual circumstances showing that the sentence within the guidelines was disproportionate. *People v Sharp*, 192 Mich App 501; 481 NW2d 773 (1992).

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage